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Convention on the Rights of the Child

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Committee on the Rights of the Child
Sixty-fifth session

Summary record of the 1885th meeting*
Held at the Palais Wilson, Geneva, on Monday, 2 June 2014, at 3 p.m.

Chairperson: Ms. Sandberg

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* No summary records were prepared for the 1883rd and 1884th meetings.

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The meeting was called to order at 3 p.m.

Consideration of reports of States parties (*continued*)

Combined third and fourth periodic reports of India (CRC/C/IND/3-4; CRC/C/IND/Q/3-4 and Add.1)

1. *At the invitation of the Chairperson, the delegation of India took places at the Committee table.*

2. **Mr. Aggarwal** (India) said that India had recently held its largest democratic parliamentary elections and that the newly elected Government had just assumed office. His country's combined third and fourth periodic reports (CRC/C/IND/3-4) had been prepared following consultations with several government ministries and with civil society. India was a vast country; its socioeconomic and cultural diversity posed challenges to policymakers, and its federal structure accorded provincial authorities a high level of autonomy. The National Commission for the Protection of Child Rights had been established in 2007 to help children assert their rights. In 2013, a new National Policy for Children had been adopted, which viewed children as individuals with rights and responsibilities appropriate to their age and level of maturity and included the definition of the child contained in the Convention

3. Under the National Food Security Act, approximately two thirds of the population were entitled to subsidized food, and children could receive meals free of charge. The Integrated Child Development Scheme had recently been restructured to focus on children under 3 years of age, as well as on pregnant and breastfeeding mothers. In addition, nutrition and counselling services had been strengthened and the care provided to underweight children improved. His Government had also launched a new programme to address the undernutrition of mothers and children in certain districts. In addition, a special tracking system for mothers and children had been introduced to ensure that pregnant women and children aged 5 years and under had access to health-care and immunization services, respectively. Furthermore, a pilot programme had been launched that aimed to improve the health and nutrition of children and pregnant and breastfeeding mothers by providing cash incentives to offset wage loss during pregnancy.

4. A new programme to address the health-care needs of adolescents, covering mental health, nutrition, substance abuse, gender-based violence and non-communicable diseases, had also been launched. The programme made use of technology and social media to reach out to adolescents. His Government had launched a new pilot scheme to address the needs of girls between 11 and 18 years of age, the aim of which was to improve their health and nutrition and to ensure that they had access to education and public services. A similar scheme would be launched for boys in the same age bracket.

5. A department dealing with disability affairs had been established under the Ministry of Social Justice and Empowerment in 2012. Funding had been allocated to two major schemes designed to assist persons with disabilities, one of which focused on rehabilitation and the other on the purchase of aids and appliances.

6. The Protection of Children from Sexual Offences Act had been enacted in 2012. The Act was gender neutral, and shifted the burden of proof onto the defendant in serious offences. It covered offences such as sexual assault, sexual harassment and the exploitation of children for pornography. The Act also provided for a number of child-friendly procedures during the pretrial and trial stages, and for expedited legal proceedings. The Criminal Law (Amendment) Act of 2013 contained a definition of trafficking and provided for a penalty of life imprisonment for the trafficking of children. In addition, some 200 anti-trafficking units had been set up. Furthermore, his Government had ratified the United Nations Convention against Transnational Organized Crime and the Protocols thereto in

2011. A task force that included members from neighbouring countries had been set up to deal with cross-border trafficking.

7. His Government planned to amend the Juvenile Justice (Care and Protection of Children) Act in order to address serious offences committed by adolescents aged between 16 and 18 years. Bodies responsible for overseeing the effective implementation of the Act had been set up in almost all districts, and police units specialized in dealing with young people had also been established. Bodies dedicated to assisting children in need of care and protection, including those who had come into conflict with the law had been established in a large number of districts.

8. A free emergency hotline had been established for children in need of assistance. The initiative was funded by the Government and run by voluntary organizations, and steps were being taken to extend the service throughout the country. A website dedicated to tracking missing children had also been developed, which provided information on the services available to children and their families and facilitated the recovery and rehabilitation of missing children. Furthermore, the Supreme Court had made it mandatory to file a First Information Report in cases involving missing children.

9. Under the Right of Children to Free and Compulsory Education Act, all children between 6 and 14 years of age were entitled to eight years of schooling. The Act had succeeded in reducing the gender gap, especially in primary education. The National Early Childhood Care and Education Policy, adopted in 2013, afforded all children access to those services.

10. His Government planned to amend the Child Labour (Prohibition and Regulation) Act to expressly prohibit the employment of children under 14 years of age and to prohibit children aged between 14 and 18 years from performing hazardous work. The amended Act would also prescribe harsher penalties for offenders.

11. While his Government had made significant progress in the area of children's rights, numerous challenges remained, including ensuring the effective implementation of existing laws and policies and the provision or adequate training to persons working with children.

12. **Mr. Gastaud** (Country Task Force) said that the State party was to be commended for its efforts to promote and protect children's rights. However, the Committee still had some concerns with regard to the implementation of the Convention. Noting that the State party had still not withdrawn its reservation to article 32, he asked whether there were particular obstacles preventing it from doing so. He invited the delegation to clarify the legal status of the Convention in the domestic legal order, and whether or not the Convention could be directly invoked before the courts. He asked whether India intended to ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

13. In view of the State party's federal structure, he asked what measures were envisaged to ensure that the provisions of the Convention and other laws were applied systematically in all states. Noting the conspicuous absence of a single piece of legislation that transposed all the provisions of the Convention into law and the fact that many of the existing provisions concerning children were contradictory or redundant, he asked whether the Government had considered overhauling the current body of legislation.

14. He invited the delegation to clarify the role played by the Ministry for Women's Empowerment and Child Protection in the coordination of programmes and policies concerning children. He asked whether the effectiveness of programmes and policies concerning children was regularly assessed and, if so, whether they achieved their objectives. In addition, he sought clarification on the mandate of the National Commission for the Protection of Child Rights. He asked how its members were selected, and whether it

could receive complaints from children. Did the Government plan to allocate more substantial resources to programmes and policies concerning children?

15. The lack of a centralized system for data collection remained a serious problem, as data were often collected by different bodies but not collated or analysed. Had a forum on child statistics ever been set up?

16. Recent studies had revealed that there was a lack of awareness of the Convention among children and persons working with them. Were children taught about the Convention in school? Had the Convention been translated into the vernacular? Which ministries and bodies were responsible for disseminating the Convention?

17. Noting that, at times, the opinion of civil society was not adequately reflected in reports on children's rights, he enquired as to the level of cooperation between the Government and civil society organizations. He also requested additional information on the large-scale industrial project that was set to displace thousands of people from their land.

18. In view of discrepancies in definitions of the legal age of a child in different legislative items, he asked whether the Government planned to harmonize the definition and bring it into line with article 1 of the Convention. He also wished to know how the State party defined the best interests of the child.

19. What measures had been taken to tackle widespread discrimination against minority groups and young girls in India, and had they been effective? Did the Government intend to roll out programmes targeting segments of society that were currently marginalized? How many persons had been brought to trial for discrimination?

20. He asked what measures had been taken to ensure that the views of the child were taken into account in settings such as schools and clinics. Did the Juvenile Justice (Care and Protection of Children) Act enshrine that principle, and could a child challenge a decision that did not abide by that principle? He wished to know whether the Government was taking steps to ensure that all children were properly registered at birth, as those who were not could be denied access to heath-care services. In addition, he asked whether a previous initiative had led to an increase in the number of birth registrations.

21. Noting that the right of the child to freedom of thought, conscience and, in particular, religion was not generally respected in the State party, he asked what measures the Government had taken to remedy that situation. He also requested further information in respect of the care afforded to unaccompanied minors by the State party. Were there measures in place to ensure that the judiciary complied with all laws concerning children, and could a child bring a case to court directly? Lastly, he asked whether the Information and Technology (Amendment) Act prohibiting the transmission of material depicting children in sexually explicit acts was systematically applied in practice, and whether children were taught about the dangers of the Internet in schools.

22. **Ms. Wijemanne** (Country Task Force) said that according to the media and other sources, sexual abuse of girls was prevalent in the State party. She asked whether statistics were available on the number of girls affected, whether there were mechanisms to protect and rehabilitate victims and what was being done to tackle gender discrimination, which appeared to be the root cause of the problem. Noting that the majority of children were still subjected to corporal punishment in schools, she wished to know what measures had been taken to put an end to that practice and to promote non-violent forms of discipline. She also wished to know what steps had been taken to prevent bullying and other forms of emotional abuse in schools.

The meeting was suspended at 3.55 p.m. and resumed at 4.15 p.m.

23. **Mr. Aggarwal** (India) said that the Child Labour (Prohibition and Regulation) Act of 1986 prohibited the employment of children in a number of occupations. However, in order to bring it into line with the International Labour Organization (ILO) Minimum Age Convention, 1973 (No. 138) and the ILO Worst Forms of Child Labour Convention, 1999 (No. 182), a bill amending that Act had been submitted to Parliament that would ban the employment of children under 14 years of age, prohibit the employment of children between 14 and 17 years of age in certain industries and introduce more severe penalties for child labour. It was hoped that the bill would be adopted during the next regular session of Parliament.

24. **Ms. Chadha** (India) said that India had a dualist system whereby international treaties were not directly incorporated into national legislation. When India planned to ratify a given instrument, the relevant national legislation was assessed for compliance. If gaps were found, a special law was required to incorporate the instrument. National laws might not refer explicitly to the Convention, but the rights enshrined therein were covered by various legislative items, as well as by the Constitution.

25. **Mr. Gastaud** asked what provisions prevailed in the event that national laws conflicted with the Convention, and whether any courts had ever based their decisions on its provisions.

26. **Ms. Chadha** (India) said that national laws prevailed over international instruments; however, the likelihood of conflict was remote, given that a gap assessment had been carried out prior to ratification. India was not a party to the Optional Protocol to the Convention on a communications procedure but had an adequate framework for addressing violations. The Constitution provided for direct access to the courts, while other bodies, such as the National Human Rights Commission and the National Commission for the Protection of Child Rights, had redress mechanisms.

27. **The Chairperson** asked whether children could file complaints for violations of their rights under the Convention and, if so, whether they could do so alone or would require the assistance of a parent or guardian.

28. **Ms. Chadha** (India) replied that children were free to file complaints independently.

29. **Mr. Aggarwal** (India) said that no problems had ever arisen from the fact that India was a federal State. Each level of government had clearly demarcated jurisdictional spheres, and the federal Government could not intervene in matters that were devolved to states.

30. **Mr. Joshi** (India) said that consultations had been held with a view to drafting a comprehensive law on children. However, it had become apparent that the consensus of all stakeholders was almost impossible to obtain. As a result, the Government had decided to take a gradual approach and address one topic at a time, starting with sexual abuse and followed by the juvenile justice system and trafficking. In addition, some child development issues were covered under the National Food Security Act and relevant amendments were being made to the Criminal Code. Thus, all of the rights enshrined in the Convention were protected in one way or another under the national legislation.

31. **Mr. Aggarwal** (India) said that the Ministry of Women and Child Development was responsible for all aspects of women's and children's affairs and also coordinated the relevant activities of other ministries and departments, at all levels.

32. **Mr. Gastaud** asked what entity took the final decision when disagreements arose between the various ministries in respect of children's affairs.

33. **Mr. Aggarwal** (India) said that disputes between ministries were usually settled amicably and that the Ministry of Women and Child Development tended to have the final

say in matters under its purview. However, when disputes persisted, they were taken up by the Cabinet Secretariat.

34. **The Chairperson** asked whether the Cabinet Secretariat based its decisions on the interests of children or on financial considerations.

35. **Mr. Aggarwal** (India) said, in reply to an earlier question regarding the hierarchy of legal and policy texts, that the Government adopted acts that were then translated into policies, action plans, strategies and projects, in that order.

36. **Mr. Khera** (India) said that the National Commission for the Protection of Child Rights was composed of a chairperson and six members, two of whom must be women, who worked in related domains including education, child psychology and juvenile justice. State-level commissions were composed in a similar manner. Children were free to address complaints to either level, directly and independently. In the event of a conflict between levels, the first entity to receive the complaint kept the file.

37. **Mr. Gastaud** asked whether the members of those commissions were elected and, if not, who appointed them and to whom they were accountable. Could they adjudicate, or were children required to bring an action before the courts?

38. **Mr. Joshi** (India) said that the Government financed the overheads of the commissions and that the members, although appointed by a Government panel of children's rights experts, were independent. The recruitment process was being reviewed by the Supreme Court. The National Commission had the same authority as the civil courts. It submitted an annual report to the Ministry of Women and Child Development which, after collecting the comments of other ministries with regard to the actions they had taken in response to the recommendations of the National Commission, transmitted the report to Parliament.

39. **Mr. Aggarwal** (India) added that members of the Commission had fixed tenure and could not be removed from office unless their integrity was in question.

40. **The Chairperson** asked how child rights-related activities were overseen and coordinated nationwide, especially in view of the number of relevant laws. She also asked how efficient the National Coordination and Action Group was in comparison with its predecessor, what its composition was and how it provided oversight at both the national and state levels.

41. **Mr. Joshi** (India) said that the National Coordination and Action Group would be headed by the Minister of Women and Child Development, who had recently been promoted to Cabinet rank. The Group remained to be constituted because of the recent change of Government, but would be composed of representatives of various ministries and would have corresponding bodies at the state and district levels. The Ministry circulated its policy papers among all the relevant ministries for input and then submitted them to the Planning Commission, which allocated funds. The National Commission could report any ministry for failure to comply with the Convention.

42. **The Chairperson** welcomed the fact that the Ministry of Women and Child Development involved certain other ministries in its policymaking, but pointed out that other, less obvious ministries, such as the Ministry of Environment and the Ministry of Transport, also had a part to play in the protection of children.

43. **Mr. Joshi** (India) said that representatives of other ministries could be invited to attend meetings where their input might be valuable, and that civil society was also involved.

44. **Mr. Mezmur** (Country Task Force) asked whether the rank of the Ministry of Women and Child Development matched the importance of its remit, given that there were over 400 million children in India.

45. **Mr. Aggarwal** (India) replied that all ministries had equal standing and that the attention given to a particular issue depended on its gravity. In terms of budget, the Ministry ranked third or fourth overall.

46. **Mr. Joshi** (India) said that the share of the Government budget allocated to the social sector had grown from 3.9 per cent to nearly 5 per cent between 2007 and 2013. The Ministry of Women and Child Development divided its resources among the various programmes based on the number of children in each state. Moreover, a portion of the funds was earmarked for more vulnerable segments of the population.

47. **Mr. Gastaud** emphasized that the figure of 5 per cent of the total budget was nevertheless low, especially when GDP growth was taken into consideration. He asked whether the Planning Commission decided what share of the budget each ministry received.

48. **The Chairperson** asked whether the Government intended to increase social expenditure.

49. **Mr. Aggarwal** (India) replied that the Planning Commission allocated available resources based on the stated needs of each ministry and that the Government was looking into ways of increasing social spending.

50. **Mr. Joshi** (India) said that, because the amount of money allocated to states for their social programmes also depended on their capacity to use it appropriately, efforts were being focused on training civil servants working at the field level before the Integrated Child Protection Scheme could be fully implemented.

51. **The Chairperson** pointed out that capacity-building also required funds.

52. **Mr. Joshi** (India) said that capacity was a greater problem than funds.

53. **The Chairperson** said that in that case, she took it that the child protection budget could easily be doubled, and asked how the Government was ensuring that state authorities were using the allocated resources responsibly.

54. **Mr. Joshi** (India) said that states had reported difficulty recruiting skilled staff. Accordingly, the Government had raised the base salary for various occupations related to the protection of children, in a bid to attract greater numbers of trained staff. Food subsidies had also been increased.

55. **Mr. Aggarwal** (India) said that the figure of 5 per cent mentioned previously referred to the share allocated to the Ministry of Women and Child Development alone. The overall social sector budget was much higher, and included resources contributed by the state authorities. Data collection remained a weak point because it was carried out by a variety of agencies using different formats.

56. **Mr. Joshi** (India), acknowledging that there was a need for data to be coordinated, said that the census was the Government's main source of information on children. Nevertheless, the Ministry of Statistics and Programme Implementation had been appointed as the focal point for all data collected by other ministries. In addition, the Ministry of Women and Child Development had conducted a study on child abuse in 2007, in which 13,000 children from various social strata across 13 states had been surveyed, which had led to the adoption of the Protection of Children against Sexual Offences Act. The Ministry had also developed the "Track Child" portal to which all children's homes were meant to upload information on the children in their care. The Supreme Court was a keen proponent of the portal and had ordered police stations to immediately post missing children reports

on it. The portal had been piloted in West Bengal three years previously, and had been expanded nationwide under the oversight of the National Legal Services Authority. Furthermore, the National Crime Records Bureau submitted an annual report, which included a section on offences against children, supported by disaggregated data.

57. All of the relevant laws and policies were available on the Ministry's website. In addition, its media division was running a broad campaign to raise awareness of children's rights. The Central Board of Secondary Education had mandated the inclusion in curricula of modules on the Convention and on various other issues, including corporal punishment.

58. **The Chairperson** asked why knowledge of the Convention remained so low, despite all of the efforts expended. Had it been translated into local languages?

59. **Mr. Gastaud** asked whether the Government had conducted any assessments to determine the familiarity of certain groups with the Convention, including judges, teachers and police officers.

60. **Mr. Aggarwal** (India) said that no such assessments had been conducted, but that efforts to disseminate the Convention were increasing from year to year. Children were taught in their local language in school, which meant they also received information about the Convention in their local language as part of the curriculum.

61. **The Chairperson** asked whether the Convention itself had been translated into local languages.

62. **Ms. Sekhar** (India) said that it had been translated only into Hindi.

63. **Mr. Aggarwal** (India) pointed out that 48 per cent of the population understood Hindi, and gave assurances that the Convention would be translated into other local languages in the future. The Government engaged in meaningful cooperation with civil society organizations and incorporated their suggestions into its programmes and policies.

64. **The Chairperson** said that, according to information before the Committee, human rights organizations had been threatened when carrying out their work.

65. **Mr. Aggarwal** (India) insisted that such organizations played a valuable role and actively participated in decision-making processes.

66. **Mr. Joshi** (India) said that there were two main types of civil society organizations. Those working in the field received government funding, while those involved in advocacy and campaigning in big cities typically did not. Given that it was the advocacy organizations that interacted directly with the Government and passed on the views of field organizations, the Government had no reason to pressure those groups, as it was not funding their work.

67. **Ms. Sekhar** (India) said that the local government of Odisha had taken proactive measures to safeguard the rights of the child in the area where the POSCO steel plant was to be built. Children in the area benefited from all national programmes and policies for children, such as the Integrated Child Protection Scheme.

68. **Mr. Gastaud** asked the delegation whether it was true that tens of thousands of families had been displaced due to the construction of the plant. In addition, he wished to know what follow-up had been given to the recommendations made by United Nations experts, including by the Special Rapporteur on the right to food.

69. **Mr. Joshi** (India) said that the term "child" was defined in different ways in various laws, depending on the social objectives of each law. For instance, while laws protecting children from sexual offences defined a child as anyone under 18 years of age, labour laws defined a child as anyone under 14 years of age, as the socioeconomic conditions in the country made it impractical to ban all persons under 18 from working. Currently, only

employment in certain hazardous occupations was prohibited for children under 14 years of age. However, a reform had been proposed that would fully ban employment for children under 14 years and regulate employment for children between 14 and 18 years of age. The legal age of marriage was 18 years for females and 21 years for males. A policy adopted in 2013 had established that anyone under 18 years of age should be considered to be a child in all future policy documents.

70. **Mr. Joshi** (India) said that under the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, persons convicted of employing scavengers or constructing dry latrines were liable to a penalty of up to 1 year's imprisonment and/or a fine of 2,000 rupees. The Act was in force in all but three states, which had enacted similar laws. A self-employment scheme had been established for the rehabilitation of manual scavengers. A new bill, intended to define manual scavenging more precisely and to hold authorities accountable for failure to implement the Act, remained pending in Parliament. A bill on the rights of persons with disabilities, introduced in February 2014, established a number of rights and special measures for persons with disabilities and included 12 new additions to the current list of recognized disabilities.

71. **Mr. Aggarwal** (India) said that the Constitution prohibited all forms of discrimination and that strict penalties were applied in case of violations.

72. **Ms. Herczog** (Coordinator, Country Task Force) asked what measures the Government was taking to support families and to promote parenting skills so as to prevent child abuse or mistreatment, and requested data on the measures taken at all levels of government. She welcomed the adoption of the National Early Childhood Care and Education Policy and asked what measures had been taken to implement it, including those designed to ensure access to early childhood care and to encourage parents to enrol their children in such programmes.

73. She noted the high number of complaints of abuse and poor living conditions in institutional care facilities for children and asked the delegation to provide information about the mechanisms used to place children in such facilities. She requested further information on proposed reforms to the foster care system, including on selection criteria and support for foster families. She asked whether the Government planned to close any institutional care facilities or regulate those operated by private entities.

74. While she welcomed the guidelines that had been established on adoption, she was concerned that they had not yet been incorporated into national law. She asked what regulations and safeguards were in place to ensure that adopted children were not at risk of abuse or harm, including sex trafficking.

75. She expressed concern about plans to replicate the Tamil Nadu cradle baby reception centres throughout the country, and asked whether any follow-up had been conducted on the fate of children left at those centres, as they were highly susceptible to human trafficking. The Committee recommended that the abandonment of children should be prevented by providing support to families and single mothers.

76. Commercial surrogacy, which was legal in India, was problematic from a child rights perspective. What provisions were in place for children born under commercial surrogacy arrangements but rejected by the parents, for example because of a disability? Lastly, she asked what provisions were in place for children whose parents were forced to leave them behind in the countryside while they moved to the cities in search of work.

77. **Ms. Wijemanne** asked whether the Government maintained a database on children with disabilities, and which government department or ministry was responsible for policies and programmes for children with disabilities. She asked for further information about their

access to education, how they were protected in the juvenile justice system and whether there were any screening programmes to detect and prevent disabilities.

78. In addition, she asked what programmes were in place to reduce infant and child mortality rates, which were particularly high among female children and infants in the first month of life. Was it true that only a quarter of births were attended by trained birth attendants, and that the figures were even lower in the case of home deliveries? She asked what was being done to reduce preventable deaths among children, particularly among those belonging to scheduled castes or tribes. She wished to know how the Government planned to respond to the high number of pregnancy-related deaths and whether it planned to extend the coverage of the maternal death audit.

79. She would also like to know what programmes were in place to address maternal and child undernutrition and to collect data and monitor progress in that regard. Noting the high number of children who did not benefit from exclusive breastfeeding, she asked why the regulations on breast milk substitutes did not appear to be enforced and whether there was a baby-friendly hospital initiative to support breastfeeding. She asked whether counselling was provided to HIV-positive mothers regarding infant feeding and whether there were any nutrition education programmes in place. She asked whether any programmes had been set up to provide safe water to families in both urban and rural areas, to promote hygiene in schools and to ensure that girls, in particular, had access to water and sanitation at school.

80. **Mr. Mezmur** (Country Task Force) asked about the situation of children in age groups not covered by the Right to Education Act and wished to know what was being done to encourage schools to implement the Act. He asked what impact corruption had on education and what action was being taken to combat corruption. He also asked what was being done to eliminate disparities between urban and rural schools, as well as between private and public schools. He wished to know the delegation's views on increasing the education budget to 6–7 per cent of the country's GDP. He requested information about measures to ensure that teachers were sufficiently qualified, to reduce dropout rates among scheduled castes and tribes and to promote leisure and recreation for children.

81. He noted that employment for children under 14 years of age was not completely prohibited and asked what measures were planned to improve that situation. He also wished to know what measures were in place to ensure that those who violated child labour laws were prosecuted and convicted and to rehabilitate all child workers. He asked whether the State party intended to ratify the ILO Worst Forms of Child Labour Convention, 1999 (No. 182) and the ILO Minimum Age Convention, 1973 (No. 138).

82. With regard to sexual abuse, he wished to know how many states had established child rights commissions and whether they had been effective. Had the Government set a deadline for the adoption of a protocol for the medical treatment and examination of victims of sexual assault, and what steps had been taken to print and distribute medical-legal protocols on that topic nationwide? How many states had developed guidelines for schoolteachers on the detection of sexual abuse and appropriate action? He would also like to know the status of the police reforms recommended by the Supreme Court. Lastly, he asked how many states had established child courts to handle cases of child abuse.

The meeting rose at 6.05 p.m.